

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 15808 of 2006

DATE OF DECISION: 24.9.2007

Prem Kumar and others

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present: Mr. Vinod Gupta, Advocate,
for the petitioners.

Ms. Ritu Bahri, Deputy Advocate General, Haryana,
for respondent Nos. 1 and 5.

Mr. Puneet Gupta, Advocate,
for respondent Nos. 2 to 4.

JUDGMENT

M.M. KUMAR, J.

This judgment shall dispose of C.W.P. Nos. 15808 of 2006 and 14003 of 2007. Challenge in these petitions filed under Article 226 of the Constitution is to the notification dated 10.11.2005, issued by the respondent State under Section 32 G of the State Financial Corporation Act, 1951 (for brevity, 'the Act'), appointing Managing Director of the Haryana Financial Corporation as 'Specified Authority', and recovery certificate dated 2.5.2006, issued by the Managing Director-respondent No. 2 by exercising power in pursuance to the aforementioned notification.

Brief facts of the case being referred from C.W.P. No. 15808 of 2006, are that the petitioners are partners of Haryana Refineries, Hisar, which is small scale industrial Unit set up in the year 1995. The Haryana Financial Corporation-respondent Nos. 2 and 3 sanctioned a loan of Rs.

16 lacs in the year 1996 to the petitioners' unit, however, upto 17.3.1997 an amount of Rs. 12,81,000/- was disbursed. It is claimed that the petitioners paid instalments on 27.10.1997, 13.1.1998, 13.2.1998, 27.2.1998 and an amount of Rs. 50,000/- was paid on 15.4.1998. Further an instalment of Rs. 1,35,000/- is stated to have been paid in April, 1998. The case of the petitioners is that due to non disbursement of complete sanctioned loan amount, the unit of the petitioners became sick. In August, 1998, the unit as well as collateral security i.e. house of the petitioners, were taken over by the respondent Corporation. The unit of the petitioners was auctioned on 5.11.2001 for a sum of Rs. 4,00,000/- and the house was sold in the month of July, 2002 for a sum of Rs. 3,25,000/-. It has been asserted that house of one of the partner was also sold for Rs. 1,85,000/-. On 2.5.2006, respondent No. 2 sent a recovery certificate under Section 32 G of the Act, for effecting recovery of Rs. 68,08,841/- against all the partners including the petitioners, to the Collector, Jind (P-1). After receiving the request from the respondent Corporation, the Collector asked the Tehsildar to recover the amount under the Land Revenue Act. It is alleged that at the instance of Shri N.K. Aggarwal-respondent No. 4, who is Branch Manager of the respondent Corporation at Hisar, even petitioner No. 1 was arrested on 19.9.2006 and put in civil prison. It is claimed that the loan amount has already been recovered from the petitioners by selling the unit as well as collateral security and the amount already deposited by the petitioners, therefore, recovery certificate for recovery of Rs. 68,08,841/- has been illegally issued, which is time barred, inasmuch as, the possession of the unit was taken in 1998 and recovery certificate was issued on 2.5.2006 after about 8 years. Relying upon the judgment of Hon'ble the Supreme Court in the case of **State of Kerala v. V.R. Kalliyani Kutty, 1999 ISJ (Banking) 656**, it has been asserted that time barred dues cannot be recovered and in the case of recovery limitation period is three years. It has also been averred

that before issuance of recovery certificate no opportunity of personal hearing has been granted, which violates the principles of natural justice. In that regard, reliance has been placed on the judgment of Hon'ble the Supreme Court in the case of **S.K. Bhargava v. Collector, Chandigarh, (1998) 5 SCC 170.**

Further case of the petitioners is that the respondent Corporation has not framed any rules and procedure as per Section 47 of the Act and, thus, it cannot issue recovery certificate under Section 32 G of the Act. A notification dated 10.11.2005 (P-3), issued by the State Government appointing the Managing Director of the respondent Corporation to be the authority for the purpose of Section 32 G of the Act has also been impugned in the instant petition on the ground that the same is not sustainable because the person who is appointed as a Authority is the Managing Director of the respondent Corporation and is an interested person and issued the recovery certificate for recovery of the amount.

In the written statement filed on behalf of the respondent Corporation-respondent Nos. 2 and 3 the stand taken is that since the petitioners have not paid the public money, therefore, recovery certificate has rightly been issued. The petitioners have paid only an amount of Rs. 10,92,630/- including the amount of Rs. 9,05,000/- from the sale proceeds and they are defaulters of payment of Rs. 68,08,841/- with interest etc. It has been admitted that loan amounting to Rs. 16 lacs was sanctioned out of which Rs. 12.81 lacs were disbursed, which was to be repaid in 27 quarterly instalments. On 11.10.1996, a mortgage deed was executed between the parties. When the petitioners committed default in making payment of loan amount, notice under Section 29 of the Act was issued and thereafter possession of the unit was taken over on 28.5.1998, followed by auction of the same. It is claimed that respondent Corporation succeeded in selling the unit on 23.5.2003 in 29th attempt, for

a sum of Rs. 4 lacs. On 26.6.2003, sale confirmation letter was issued. On 19.3.2004, mortgaged house of Shri Jagat Ram-one of the partner was sold for an amount of Rs. 1.80 lacs, which was 8th attempt after giving due publicity and registered notice to the said partner. Similarly, mortgaged house of the other partner, namely, Shri Rakesh Kumar was sold for an amount of Rs. 3.25 lacs on 10.11.2005 in the 9th attempt after giving due publicity and registered notice to the said partner. It has been submitted on behalf of the respondent Corporation that sale proceeds of the three mortgaged properties stand credited to the account of the defaulters and registered notice dated 1.3.2006 (R-2/1) was issued to the petitioners and other defaulters for determination of the sum due from them, asking them to appear before the Specified Authority on 14.3.2006. However, defaulters failed to appear before the Specified Authority and, therefore, it determined the amount due at Rs. 68,08,841/- and recovery certificate dated 2.5.2006 (P-1) was issued under Section 32 G of the Act. It is denied that petitioner No. 1 was never arrested on 19.9.2006 under the recovery proceedings, whereas another partner Shri Rakesh Kumar was arrested by the Tehsildar, Jind on 19.9.2006. It has been denied that any period of limitation is prescribed under the Act for recovery of the due amount and that recovery certificate has been issued immediately after the sale of the last mortgaged property on 10.11.2005.

In regard to challenge made to the notification dated 10.11.2005 (P-3) regarding appointment of the Managing Director of the respondent Corporation to be a specified authority for the purpose of Section 32 G of the Act, it has been asserted that the aforementioned notification has been issued in accordance with law and this issue has already been upheld by Hon'ble the Supreme Court in the case of **Delhi Financial Corporation v. Rajiv Anand, (2004) 11 SCC 625**. It has further been denied that principles of natural justice have been violated, inasmuch as, recovery certificate was issued after issuance of registered

notice dated 1.3.2006 (R-2/1). A short written statement by way of affidavit has also been filed on behalf of Shri Ramesh Chander, Branch Manager, HFC, Hisar-respondent No. 4 adopting the detailed written statement filed on behalf of respondent Nos. 2 and 3. However, he has denied all the allegations levelled against him in the petition asserting that he has been unnecessarily impleaded as party respondent in the present proceedings just to scandalize the proceedings.

In the replication, the petitioners reiterated the contents of the writ petition. However, they specifically denied that any registered notice dated 1.3.2006 was issued to them asking them to appear before the Specified Authority for determination of the dues. A rejoinder to the replication has been filed on behalf of the respondent Corporation whereby notices issued to the petitioners as well as auction notices have been placed on record as Annexures R-2/2 (Colly) and R-2/3 (Colly).

Mr. Vinod Gupta, learned counsel for the petitioners has made following three submissions before us:-

- (a) The notification dated 10.11.2005 (P-3) is wholly arbitrary as the Managing Director of the respondent Corporation has been appointed as Specified Authority under Section 32 G of the Act. According to the learned counsel in the facts and circumstances of the instant case, the notification is liable to be set aside and the judgment of Hon'ble the Supreme Court in the case of Rajiv Anand (supra) would not apply.
- (b) No recovery could be effected from the petitioners as the same is barred by period of limitation. According to the learned counsel the cause of action has arisen to the respondent Corporation on 28.5.1998 when the unit was taken over under Section 29 of the Act and no notice under Section 32 G of the Act could be issued in the year 2006. In that regard he has placed reliance on the judgments of

Hon'ble the Supreme Court in the cases of **Maharashtra State Financial Corporation v. Ashok K. Agarwal**, (2006) 131 Company Cases 1 and **V.R. Kalliyani Kutty's case** (supra) as well as a judgment of Kerala High Court in the case of **Annamma Jose v. Kerala Financial Corporation**, 2003 (1) ISJ (Banking) 55.

- (c) It has also been submitted that principles of natural justice have been flagrantly violated because neither any notice was issued to the petitioners before issuance of recovery certificate nor they were afforded any opportunity of hearing. In support of this submission, learned counsel has placed reliance on a judgment of Hon'ble the Supreme Court in the case of S.K. Bhargwa (supra). He has substantiated his argument by placing reliance on the averments made by respondent Nos. 2 and 3 in para 12 of the written statement, which are to the effect that details of the procedure to be adopted under Section 32 G of the Act are being finalized and are in active correspondence with the State Government for approval and notification.

After hearing learned counsel for the parties at length, we are of the considered view that there is no merit in the instant petitions and the same deserves to be dismissed.

It is undisputed that the Government in terms of Section 32 G of the Act, has delegated the authority vide notification dated 10.11.2005 (P-3) to the Managing Director of the Haryana Financial Corporation for the purposes of the said Section. In pursuance to the notification, the Managing Director has addressed a letter to the Collector of the area for recovery of the outstanding amount of Rs. 68,08,841. We find that Section 32 G of the Act postulate delegation of power for the

purposes of that Section to any authority. It is appropriate to read Section 32-G of the Act, which is as under:-

“32-G. Recovery of amounts due to the Financial Corporation as an arrear of land revenue. – Where any amount is due to the Financial Corporation in respect of any accommodation granted by it to any industrial concern, the Financial Corporation or any person authorised by it in writing in this behalf, may without prejudice to any other mode of recovery, make an application to the State Government for the recovery of the amount due to it, and if the State Government or such authority, as the Government may specify in this behalf, is satisfied, after following such procedure as may be prescribed, that any amount is so due, it may issue a certificate for that amount to the Collector and the Collector shall proceed to recover that amount in the same manner as an arrear of land revenue.” (emphasis added)

A perusal of the aforementioned section shows that a special provision for recovery of dues of the financial corporation has been made which enable the corporation to adopt a peculiar mode. An application is required to be made by the Corporation like Haryana Financial Corporation-respondent No. 2 to the State Government for recovery of its amount due. If the State Government or such authority as the Government may specify in that behalf feels satisfied that any such amount is due then it may issue a certificate for the recovery of such amount to the Collector. The Collector is then under obligation to proceed to effect recovery of the amount in the same manner as an arrears of land revenue. In the present case, powers have been delegated to the Managing Director of the Haryana Financial Corporation-respondent No. 2, who is to record his satisfaction with regard to the amount due. We do

not find that the notification dated 10.11.2005 (P-3) suffers from any illegality merely because the authority has been vested in the Managing Director of the respondent Corporation. It is true that no person can be a judge in his own cause. But the question as to whether this principle would apply to the notification dated 10.11.2005 (Annexure P-3) vesting the power with the Managing Director of the respondent-corporation needs to be considered. The matter is no longer *res integra*. A Division Bench of this Court in the case of **Shakuntla Nayar v. Punjab Financial Corporation**, (Civil Writ Petition No. 17098 of 2001, decided on **07.05.2002**) has upheld the notification and the view taken by this Court was accepted by Hon'ble the Supreme Court. The view taken by the Delhi High Court in the case of **Rajiv Anand v. Union of India**, (1998) 93 **Company Cases 89**, was contrary to the view taken by a Division Bench of this Court. This Court in Shakuntla Nayar's case (supra) had not accepted the view of Delhi High Court in Rajiv Anand's case (supra). Hon'ble the Supreme Court placing reliance on a constitution Bench judgment rendered in the cases of **Lachhman Dass v. State of Punjab**, AIR 1963 SC 222, **Malik Ram v. State of Rajasthan**, AIR 1961 SC 1575 and **Accountant and Secretarial Services (O) Ltd. v. Union of India**, (1988) 4 SCC 324 has held in the case of Rajiv Anand's case (supra) as under:

“14. Thus, the authorities disclose that mere appointment of an officer of the corporation does not by itself bring into play the doctrine that “no man can be a judge in his own cause”. For that doctrine to come into play it must be shown that the officer concerned has a personal bias or a personal interest or has personally acted in the matter concerned and/or has already taken a decision one way or the other which he may be interested in supporting. This being the law it will have to be held that the decision of the Delhi High

Court is erroneous and cannot be sustained and the view taken by the Punjab and Haryana High Court is correct. It will, therefore, have to be held that Managing Director of a financial corporation can be appointed as an authority under Section 32-G of the Act.”

It is also appropriate to mention here that we have already taken the aforementioned view while dismissing a similar petition in the case of **Suresh Kumar v. State of Haryana and others**, (C.W.P. No. **13047 of 2007, decided on 27.8.2007**).

In view of the afore-mentioned enunciation of law upholding the appointment of Managing Director as the authority of the State Government under Section 32 G of the Act, the notification dated 10.11.2005 (Annexure P-3) deserves to be upheld and accordingly the letter dated 2.5.200 (P-1) addressed to the Collector would not be open to any challenge.

In so far as the second submission of the learned counsel for the petitioners is concerned that no recovery could be effected from the petitioners as the same is barred by period of limitation, we find force in the stand taken by the respondent Corporation in its written statement that it is legally entitled to recover the outstanding dues from the defaulters like the petitioners who have not paid the public money. It has come on record that the petitioners have paid only an amount of Rs. 10,92,630/- including the amount of Rs. 9,05,000/- from the sale proceeds. As per the dues determined by the Specified Authority the petitioners are liable to pay an amount of Rs. 68,08,841/- with interest. Loan amounting to Rs. 16 lacs was sanctioned in the year 1996 out of which Rs. 12,81,000/- were disbursed to the petitioners upto 17.3.1997. On 11.10.1996, a mortgage deed was executed between the parties. When the petitioners committed default in making payment of loan amount, a notice under Section 29 of the Act was issued and thereafter

possession of the unit was taken over on 28.5.1998. Thereafter the unit of the petitioners was auctioned on 23.5.2003 for a sum of Rs. 4,00,000/-. On 26.6.2003, sale confirmation letter was issued. On 19.3.2004, mortgaged house of Shri Jagat Ram-one of the partner was sold for an amount of Rs. 1.80 lacs after giving due publicity and registered notice to him. The third mortgaged property i.e. house of the other partner, namely, Shri Rakesh Kumar was sold for an amount of Rs. 3.25 lacs on 10.11.2005 after giving due publicity and registered notice to him. The sale proceeds of the above mentioned three mortgaged properties has been credited to the account of the petitioners. It has also come on record though disputed by the petitioners that registered notice dated 1.3.2006 (R-2/1) was issued to all the petitioners and other defaulters for determination of the sum due from them, asking them to appear before the Specified Authority on 14.3.2006. However, they failed to appear before the Specified Authority and an amount of Rs. 68,08,841/- was determined by the Specified Authority and recovery certificate dated 2.5.2006 (P-1) was issued under Section 32 G of the Act. It is, thus, clear that for recovery of the due amount, recovery certificate has been issued immediately after the sale of the last mortgaged property. The question of limitation would not arise in the present case because the unit was taken over on 28.5.1998 and thereafter it was auctioned on 23.5.2003. On 19.3.2004, the mortgaged property of Shri Jagat Ram, partner, was sold and the property of another partner Shri Rakesh Kumar was sold on 10.11.2005. The sale proceeds of all these properties were credited to the account of the respondent Corporation. There could not be any possibility of determining the amount due from the petitioner which could be done only in 2006 by the Specified Authority. The period of limitation at best start running from 2006 but the recovery notice was issued on 2.5.2006 (P-1). Therefore, the argument raised by learned counsel for the petitioner is liable to be rejected. The judgments referred to by the

learned counsel for the petitioners are not applicable to the facts and circumstances of the present case. In Maharashtra State Financial Corporation's case (supra), their Lordships of the Supreme Court have held that the period of limitation for recovery of loan by the State Financial Corporation from a borrower is three years and not twelve years. In that case, the Corporation had filed an application under Sections 31 and 32 of the Act against the borrower for recovery of loan on October 25, 1983. A notice was sent to the Director who stood surety for repayment of loan taken by the company only on 7.12.1991/2.1.1992 for recovery of shortfall. It was held that the application was barred by limitation. Whereas in the present case the borrower was to repay the loan in 27 quarterly instalments and had executed mortgage deed. The mortgaged property was sold on 23.5.2003 in 29th attempt, 26.6.2003 and 19.3.2004. Another mortgaged property of Shri Rakesh Kumar was sold on 10.11.2005. After adjusting the amount realised from the sale of mortgaged assets, the respondent Corporation sent a registered notice on 1.3.2006 to other defaulters for determination of the sum due and they were to appear before the Specified Authority on 14.3.2006. The Specified Authority determined the amount thereafter although the petitioners failed to appear and recovery certificate on 2.5.2006 was issued under Section 32 G of the Act. On the facts of the present case, the plea of limitation could not be available as the demand was raised after issuance of continuous notices and selling of mortgaged property. There was no cause of action with the respondent Corporation to invoke Section 32 G till such time the mortgaged properties were sold and the arrears were determined. Other judgments do not have any application to the facts of the present case. Therefore, we find no merit in the submissions made by learned counsel for the petitioners.

The third submission of the learned counsel for the petitioners that principles of natural justice have been violated is also

untenable. Mr. Puneet Gupta, learned counsel for respondent Nos. 2 to 4, produced the original record pertaining to the case of the petitioners. A bare perusal of file bearing No. 41, Section RC, shows that a notice bearing Ref. No. HFC/RC/2006/31043 to 31050, dated 1.3.2006, under Section 32 G of the Act was issued to Sarvshri Prem Kumar, Rajbir Singh, Jagat Ram Sharma, Surinder Singh, Suresh Chand and Smt. Santosh Rani, raising a demand of Rs. 68,08,841/- with further interest @ 19% per annum & 21% per annum from 1.12.2005 until recovery of full amount besides incidental and misc. expenses. The aforementioned persons were informed to appear before the Specified Authority at S.C.O. 17-19, Sector 17-A, Chandigarh on 14.3.2006 at 11.00 A.M. It was also specifically mentioned that in default of appearance on the said date, the case would be decided by the Managing Director in their absence. Proceedings held on 14.3.2006 before the Specified Authority i.e. Managing Director of the respondent Corporation are also available in the said file, which reads as under:-

“3. M/s Haryana Refineries, Hisar.

The mortgaged assets in this case have been disposed off by the corporation at Rs. 9.05 lacs. None of the representatives of the concern turned up for hearing. I determine the amount due from the party at Rs. 68,08,841/- with further intt. From 1.12.2005 as per the policy of the corporation. The Recovery Certificate be issued for the recovery of amount due under section 32(G) of SFCs' Act, 1951 as determined by me.”

Another record file w.e.f. 20.2.2006, starting from Sr. No. 3080 has also been produced to show us the postal receipts through which various notices were sent to the petitioners. A perusal of the said file shows that in the entry dated 3.3.2006, at Sr. Nos. 3301, 3306, 3313, 3114, 3343 and 3350, names of all the petitioners have been recorded

showing letters were duly dispatched to them. There is also a seal of postal authorities i.e. G.P.O. Chandigarh, dated 3.3.2007. This shows that notices were sent at their correct addresses to the aforementioned persons under registered cover. Therefore, the plea of the petitioners that principles of natural justice have not been complied with is totally belied. It is settled law that once the notices have been sent under registered post, they are presumed to be served on the addressee. It appears to us that the petitioners did not appear before the Specified Authority on 14.3.2006 despite service of notice upon them.

In view of the above reasons, we do not find any merit in these petitions warranting their admission and the same are accordingly dismissed.

(M.M. KUMAR)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

September 24, 2007

Pkapoor/okg

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